the principal case, not one of the three statutory remedies permitted here was resorted to by the defendant. Apparently then the case is a radical departure from former holdings. Its effect can only be guessed at.

MUNICIPAL CORPORATIONS—VACATING STREETS—CURATIVE STATUTES.—The city council of Montgomery, without any express authority from the legislature, attempted to authorize the defendant railway company to construct its freight house across the foot of a street. Subsequently the legislature passed an act ratifying "all grants, rights, privileges, and franchises, heretofore granted, or attempted to be granted, to railroads, by the city council of Montgomery." In a suit by the State, against the railroad to force it to remove the freight house, *held,* that the original act of authorization by the city council was void, but that the subsequent act of the Legislature was valid and operated retrospectively to validate the void ordinance. *State ex rel. Attorney General* v. *Louisville and N. R. Co.,* (1909), — Ala. —, 48 South. 391.

That a municipal corporation may not, without express legislative authority, dispose of its streets to private persons is almost universally conceded, (20 AM. AND ENG. ENCY. LAW, Ed. 2, p. 1188, though see *Tomlin* v. *Cedar Rapids and Iowa City Ry. and Light Co.,* (1909), — Iowa —, 120 N. W. 93, where the contrary is held by a divided court. That the legislature has the power to vacate a street in a city for any purpose, or to authorize the city to do so, seems to be equally well settled. ELLIOTT, ROADS AND STREETS, Ed. 2, 959. The real question then is as to the power of the legislature to validate a void city ordinance. When the invalidity of the ordinance arises merely from some irregularity or want of formality in its passage, the authorities seem to be agreed that a curative statute will be valid. *Town of Fox* v. *Town of Kendall,* 97 Ill. 72; *Mason* v. *Spencer,* 35 Kan. 512, 11 Pac. 402. Where, however, as in the principal case, the ordinance in question was absolutely unauthorized and ultra vires, a different situation would seem to be presented. At least one very respectable court holds, with what would seem to be the better reasoning, that such an ordinance, being void, is in fact non-existent and is in consequence absolutely incapable of ratification. *In re Inglis,* 8 Ont. L. R. 570. And in Illinois it has been decided that a particular ordinance cannot be ratified by a general statute authorizing the enforcement of all ordinances "heretofore made upon the subject." *Chicago* v. *Rumpff,* 45 Ill. 90, 92 Am. Dec. 196. However, the great weight of American authority appears to hold with the principal case that, whenever the legislature might originally have conferred the power to pass an ordinance, it may legally ratify such an ordinance after its passage. *Nottage* v. *Portland,* 35 Ore. 539, 58 Pac. 883, 76 Am. St. Rep. 513. 28 CYC. 376.

OFFICERS—VACANCY IN OFFICE.—One A having been committed to jail by B, a Justice of the Peace, petitioned for habeas corpus on the ground that B was not rightfully in office. B had been appointed Justice of the Peace to fill an alleged vacancy which arose by the death of C. C, who had been duly elected to the office in question, and who had filed his oath and bond, died before the commencement of the term for which he was elected, and B was

appointed to fill the vacancy resulting, it is claimed, from C's death. *Held,* that C was not the incumbent of the office and consequently his death did not create a vacancy which could be filled by appointment. *Ballantyne* v. *Bower* (1909), — Wyo. —, 99 Pac. 869.

It is very often a matter of difficulty to determine when a vacancy in office occurs. Necessarily the constitution and statutes involved are of first consideration. With respect, however, to the case in hand, a few controlling principles have found application in the several states. Where, for example, there is no provision in the law that a prior incumbent shall hold over till his successor has been elected and qualified the failure of the newly elected officer to qualify would create a vacancy. *State* v. *Wilson,* 72 N. C. 155. But it is otherwise where the law contains such a provision. *Commonwealth* v. *Hanley,* 9 Pa. St. 513. And again in the latter event the better rule is the one followed by the principal case that no vacancy authorizing an appointment is caused by the death of the person elected and occurring before he has qualified. *Kimberlin* v. *State,* 130 Ind. 120; *People* v. *Lord,* 9 Mich. 227; *State* v. *Elliot,* 13 Utah, 471; *People* v. *Ward,* 107 Cal. 236; *State* v. *Dobbs,* 182 Mo. 359; *State* v. *Seay,* 64 Mo. 89, 27 Am. Rep. 206. The reasoning of those cases (*Olmstead* v. *Augustus,* 112 Ky. 365; *Maddox* v. *York,* 21 Tex. Civ. App. 622; *State* v. *Hopkins,* 10 Ohio St. 509), which hold that a vacancy results when the newly elected dies even before he has qualified is not very convincing and certainly not in accord with what seems to be the weight of authority.

PARTNERSHIP—SALE OF GOODWILL—INJUNCTION.—A co-partner sold his interest on credit under an agreement stipulating that a firm agreement that each partner should give his undivided attention to the interest of the business would remain in force. The retiring partner entered into a competing business, soliciting the old customers, during the life of the firm agreement. *Held,* the remaining partner was entitled to an injunction. *Reber* v. *Pearson* (1909), — Mich. —, 119 N. W. 897.

This case is interesting as involving the right of a partner who has sold the goodwill of a business to solicit old customers. There is a marked diversity of opinion upon this subject. The English cases hold that the vendor of the goodwill of a business has the right to re-engage in the same business unless he expressly agrees not to do so, but that he has no right to solicit the customers of the old firm personally. *Labouchere* v. *Dawson* (1872), L. R. 13 Eq. 332, 25 L. T. 894; *Ginisi* v. *Cooper* (1880), 14 Ch. Div. 596; *Walker* v. *Moffram* (1881), 19 Ch. Div. 355; *Pearson* v. *Pearson* (1884), 27 Ch. Div. 145, overruled by *Trego* v. *Hunt* [1896], App. Cas. 7; *Jennings* v. *Jennings* [1898], 1 Ch. 378; *Curl Bros.* v. *Webster* [1904], 1 Ch. 685. The American cases are in conflict; the leading case was decided by the same court that decided the principal case. *Williams* v. *Farrand,* 88 Mich. 473, 50 N. W. 446, 14 L. R. A. 161. The holding is in variance with the English rule as stated in *Trego* v. *Hunt* (supra), the court saying: "The rule that a retiring partner cannot solicit the customers of the old firm has no support in principle. Every act of his in establishing a new business would